

IN THE MATTER OF LICENSE NO. 347115
MERCHANT MARINER'S DOCUMENT Z-711307-D1
AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: William H. HALL

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1852

William H. HALL

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 13 April 1970, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman's documents for six months upon finding him guilty of misconduct. The specification found proved alleges that while serving as a third mate on board USNS JACK J. PENDLETON under authority of the document and license above captioned, on 16 May 1969, Appellant assaulted and battered a fellow crewmember, one Joseph E. Richards, third mate, by hitting him with fists and kicking him with his feet at Port Huneme[sic], California. (The Examiner's findings correct this insignificant error by referring to "Port Hueneme").

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of certain witnesses and documentary evidence.

In defense, Appellant offered in evidence his own testimony as well as that of another witness

AT the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of six months.

The entire decision was served on 16 April 1970. Appeal was timely filed on 7 May 1970. Although Appellant had until 13 October 1970 to add to his original statement of grounds for appeal, he has not done so.

FINDINGS OF FACT

On 21 May 1969, Appellant was serving as a third mate on board USNS JACK J. PENDLETON, and acting under authority of his license and document while the ship was at Port Hueneme, California.

On that date, one Joseph E. Richards, another third mate aboard PENDLETON, had the 2000-2400 watch. At about 2300, Richards, who had not felt well all day, told the quartermaster that he was going to his quarters and that if any officer came aboard he wished to be relieved. Appellant came aboard about 2310 and went to see Richards whom he in his bunk. Appellant asked Richards why he was asleep in his bunk when he was supposed to be on watch. Richards in turn asked Appellant why he had reprimanded him that afternoon. Neither answered the other's question.

Appellant left and started to go down a ladder. Richards followed him. When Richards called to him and repeated his question Appellant returned and told Richards that he did not know his job. Richards then struck Appellant on the left cheek. Appellant struck Richards knocking him to the deck. He struck more blows on Richards with his fist and then repeatedly kicked him.

One Darsten, a third assistant engineer, hearing the noise from the deck below, to the scene and saw Richards on the deck with his face a mass of blood and Appellant standing over him.

A hairpiece had been dislodged from Richards in the course of the encounter. Appellant threw it over the side.

Richards was removed from the vessel to a hospital. As a result of his injuries he was not fit for duty for a month.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contented that there was no proof of the requisite intent for assault and battery, that there was sufficient provocation to justify Appellant's action, and that he acted only in justified self-defense.

APPEARANCE: Charles O. Morgan, Esq., San Francisco, California.

OPINION

I

On Appellant's first point, it is noted that assault and battery is not an offense for which specific intent is essential as in "assault with intent" to accomplish some ulterior purpose. It

is enough that an unlawful use of force upon the person of another be shown.

The use of force was amply demonstrated; the only question is that raised in Appellant's other two points, whether it was justified.

II

Appellant's last two points are parts of one argument. The first is an insufficient step to have meaning unless the second step is taken also.

Provocation in the way of language or exasperating action does not justify the use of force on another person. The only "provocation" which can be recognized is that which constitutes a response as justified self-defense. Nothing less is acceptable.

On the findings of the Examiner, which I have accepted on this point, Richards struck the first blow. This authorized Appellant to use sufficient force to cause Richards to desist. State v Woodward, 58 Idaho 385, 74 P. 2nd 92. The force used by Appellant upon Richards, striking him with his fist after Richard was down on the deck and kicking him, clearly went beyond the bounds of necessity and thus Appellant's acts themselves, by sheer excess, became assault and battery. State v Woodard, supra.

ORDER

The order of the Examiner dated at San Francisco, California, on 13 April 1970, is AFFIRMED.

C. R. BEMOER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C., this 15th day of September 1971.

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